

Florida's 1990 Prescribed Burning Act

Protection for responsible burners

By Jim Brenner and Dale Wade

Most wildland managers are well aware of the ambivalent nature of fire. They know this natural phenomenon has awesome destructive potential under adverse fuel and weather conditions, but they also recognize it has the unique ability to produce a wide range of desirable outcomes under less severe conditions. Prescription burning is the process of igniting fires under selected conditions, to achieve specific objectives on a given area, in accordance with strict parameters. In recent years, this practice has come under increasing attack in Florida. Some public concerns about burning are well-founded, but some are caused by misconceptions and misunderstandings.

Florida's population has been growing at an unprecedented rate, and a large majority of new residents come from areas where the historical relationship between fire and the biota has long been severed. In Florida this relationship, already timeless when first described by de Laudonniere (1587) and other early explorers, has survived. For centuries, Native and European Americans have used fire to shape and maintain Florida's ecosystems. They learned that selective burning could enhance the quality of their lives. As in much of the South, fire was viewed as a benefit to the community. Fires often were set with little consideration for potential deleterious side effects, however. This attitude was perhaps exemplified by a Southern Appalachian resident in 1939: "Woods burnin's right. We allus done it. Our pappies burned th' woods an' their pappies afore 'em. It war right fer them an' it's right fer us" (Pyne 1982, p. 143).

As the population of Florida grew, prescribed burners increasingly had to become cognizant of the effect their fires had on the general population. In response to this emerging need for fire-related information, the Southern Forest Fire Laboratory, the first federal installation devoted to fire research, was built in 1958. In 1962, the Florida-based Tall Timbers Research Station began a series of fire ecology conferences that continues today.

Ranchers and foresters no longer ride through the woods flipping kitchen matches from horseback—a great deal more planning is now required to make sure a burn and its smoke will have minimal off-site impact. When



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this planning is not adequate, prescribed burning can be very costly indeed. The number of lawsuits against landowners pertaining to fire and smoke is increasing every year. The use of prescribed fire, as measured by acres burned, has decreased slightly over the last 10 years (*fig. 1*). Acreage burned for range management purposes is conservatively estimated at about 2 million acres per year. However, this number is not included in *figure 1* totals because it cannot be separated from burns for such objectives as sugar cane foliage removal and wheat stubble disposal, which are all lumped together under the general heading of "agricultural burning."

The fact that prescribed burning continues to be used on several million acres each year in Florida can be attributed to several factors: (1) a single fire can provide multiple benefits at a fraction of the cost of other alternatives; (2) prescribed fire is the only practical way to achieve some desired benefits; and (3) attempts at fire exclusion have not been successful in the long run without a concomitant (and usually unwanted) change in vegetative cover type. In a rare show of solidarity, many parties that normally hold opposing viewpoints—conservationists, preservationists, timber companies, ranchers, public agencies at local, state, and federal levels, and others—joined together to promote and protect the use of prescribed fire in Florida.

Prescribed Burning Act of 1990

A blue-ribbon committee translated these prescribed burning concerns into proposed legislation that was introduced into the 1990 legislative session. Representative Frances L. "Chance" Irvine and Senator Karen Thurman led the efforts to make sure everyone understood the critical need for such legislation. Thanks to them and the efforts of many others, the Florida legislature determined that prescribed fire is a land management tool that benefits the safety of the public, the environment, and the economy of Florida. Florida State Statute 590.026, the Florida Prescribed Burning Act, became law on October 1, 1990. This legislation, with its associated administrative rules, outlines accepted forestry burn practices in the state. It also protects prescribed burners from civil liability as long as they or their agents are not found generally

negligent as defined in Florida Supreme Court ruling *Midyette vs. Madison*, No. 74,091 (1990). In addition, prescribed burns conducted in accordance with the statute may no longer be terminated because of nuisance complaints.

This law authorizes and promotes the continued use of prescribed burning for ecological, silvicultural, wildlife management, and range management purposes. The advantages of prescribed fire are outlined in the statute as follows:

1. Prescribed burning reduces naturally occurring vegetative fuels within wild land areas. Reduction of the fuel load reduces the risk and severity of major catastrophic wildfire, thereby reducing the threat of loss of life and property, particularly in urbanizing areas.

2. Most of Florida's natural communities require periodic fire for maintenance of their ecological integrity. Prescribed burning is essential to the perpetuation, restoration, and management of many plant and animal communities. Significant loss of the state's biological diversity will occur if fire is excluded from fire-dependent ecosystems.

3. Forest land and range land constitute significant economic, biological, and aesthetic resources of statewide importance. Prescribed burning on forest land prepares sites for reforestation, removes undesirable competing vegetation, expedites nu-

trient cycling, and controls or eliminates certain forest pathogens. On range land, prescribed burning improves the quality and quantity of herbaceous vegetation necessary for livestock production.

4. The state purchased hundreds of thousands of acres of land for parks, preserves, wildlife management areas, forests, and other public purposes. The use of prescribed burning for management of public lands is essential to maintain the specific resource values for which these lands were acquired.

5. A public education program is necessary to make citizens and visitors aware of the public safety, resource, and economic benefits of prescribed burning.

6. Proper training in the use of prescribed burning is necessary to ensure maximum benefits and protection for the public.

7. As Florida's population continues to grow, pressures from liability issues and nuisance complaints inhibit the use of prescribed burning.

Legal Requirements and Liability

This legislation is intentionally general. It allows the Department of Agriculture and Consumer Services, through the rule-making process, to establish and update specific guidelines as necessary. In order to receive protection under this law, at least one certified prescribed burn manager must be present while the prescribed burn is being conducted. In addi-

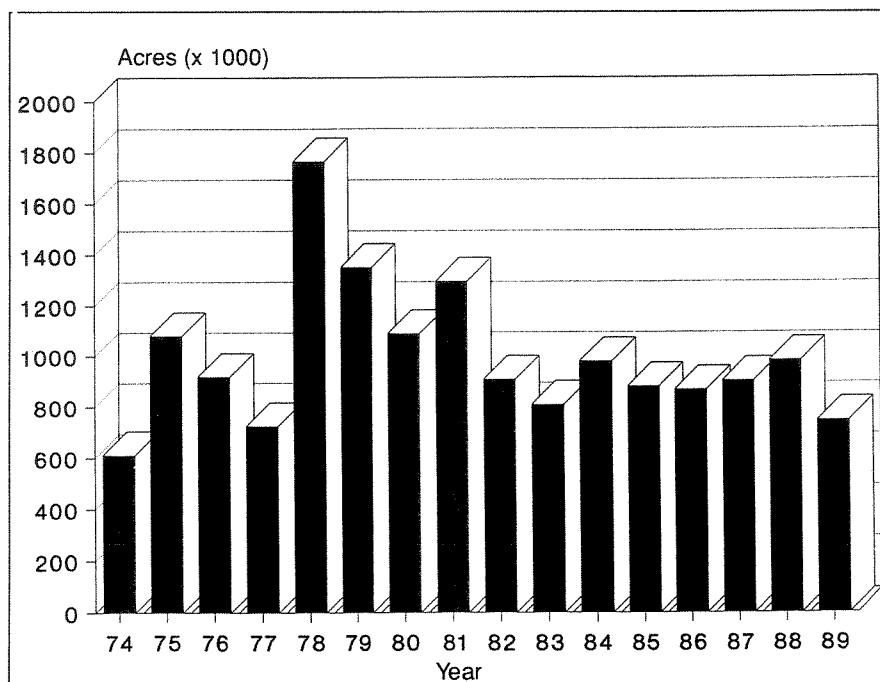


Figure 1. Silvicultural burn acreage in Florida, 1974–89.



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The Florida Prescribed Burning Act of 1990 specifically endorses prescription burning as a valid resource management tool.

tion, a written prescription must be prepared before the Division of Forestry can grant an authorization to burn. This prescription must be available on-site during the burn.

Prescription burns that adhere to these two conditions receive the following protection under the law:

1. Be considered in the public interest and shall not constitute a public or private nuisance when conducted pursuant to state air pollution statutes and rules applicable to prescribed burning.
2. Be considered a property right of the property owner if the fuel is naturally occurring vegetation and it is burned pursuant to the requirements of this law.
3. No property owner or his agent, conducting a prescribed burn pursuant to the requirements of this law, shall be liable for damage or injury caused by fire or resulting smoke, unless negligence is proven.

The Department of Agriculture and Consumer Services has expanded its rules on open burning to include specific language that outlines the responsibilities of both the department and the burner. One of the most important requirements of Florida's prescribed burn law is the written plan or prescription. The rules define exactly how this document is to be prepared. It must include but is not limited to (1) stand or site description; (2) map of the area to be burned; (3) personnel and equipment to be used; (4) desired weather (surface windspeed and direction, transport windspeed and direction, minimum mixing height, minimum rela-

tive humidity, maximum temperature, fine-fuel moisture); (5) fire behavior factors (burn technique, flame length, rate of spread); and (6) signature of the certified burn manager.

The rules require that the certified burn manager screen the prescription for possible negative smoke impact on the surrounding area prior to approving the prescription. His or her signature on the plan indicates approval. The Florida Supreme Court found in *Midyette vs. Madison* that prescribed burners can only be found generally negligent if they do not follow "accepted forestry practices." The Florida Statutes and Administrative Code was changed in January 1991 to clearly define accepted forestry practices; omission of any of the above steps would constitute general negligence.

Certification Courses

Individuals become certified prescribed burn managers in Florida by completing either of two fire classes. The Certified Burners Course is tailored to people with considerable prescribed burning experience. Its one-day training and exam, given at Florida Division of Forestry district offices, exposes attendees to current fire management regulations and the policies of federal, state, and county agencies.

The Inter-Agency Basic Prescribed Fire Course is designed for people with less experience. It provides 40 hours of intensive training that includes both classroom discussions and field exercises. A prerequisite to course comple-

tion and certification is experience in both the planning and execution phases on at least three prescribed burns. To become certified, individuals must also pass a written examination given at the end of the course. In addition, 20 to 30 hours of reading are assigned before attendance at either course.

The number of Inter-Agency Basic Prescribed Fire classes offered has increased each year; seven are scheduled for fiscal year 1992. Since the course was first offered in 1988, more than 1,600 people have been certified throughout the South. Class size is limited to 30 students, and the number of applicants far exceeds the number of available slots. This backlog should continue to rise for several years as more and more people become aware of the protection the law affords to silvicultural and range management burners.

Maintaining the Benefits

The indiscriminate use of controlled fire, which was characteristic of the Old South, has long since been replaced by well-planned and carefully executed prescribed burns. However, Florida's fast-growing population, with the accompanying urban sprawl and expanding highway network, suggests additional constraints are likely. Smoke and fire are ordinarily not compatible with suburban residents and travelers.

Most state forestry agencies now have the statutory responsibility to authorize prescription burns. Because Florida has been a nationwide leader in population growth for the past several decades, the impact of this increase on natural resource management was experienced sooner than in other states. In 1977 Florida passed the Hawkins Bill, which contained procedures under which the Division of Forestry could prescribe-burn hazardous accumulations of wildland fuels on private land (Wade and Long 1979). The intent of the law was to reduce the conflagration potential on absentee landholdings. Close to 50,000 acres have been burned under its auspices.

We firmly believe that resource managers will have to become even more skillful in applying prescribed fire and in educating the public about the ramifications of their decisions regarding the continued intentional use of this ecosystem

process. Society has given fire managers the authority to use prescription fire as they deem necessary, but this authority can be revoked at any time.

Wildland managers who use prescribed fire would do well to adhere to the words of Herbert Stoddard, one of the first advocates of this practice: "Fire may well be compared to a two-edged sword which requires judgment, care, and experience to properly handle, and I obviously cannot be responsible for the way in which fire is actually used on any ground but my own" (Tall Timbers Research Station 1961, p. 50). Stoddard also had some advice for those who would terminate the use of fire in resource management: "The conditions under which developed the magnificent virgin stands of southeastern pines having included frequent burning, surely carefully controlled fire for the benefit of animal life adjusted along with the forests to periodical, though uncontrolled, burning through the ages has the merit of following an established and successful procedure. In our opinion, to exclude fire permanently from the park-like pinelands of the Southeast is to jeopardize both the flora and fauna and to contribute to their replacement by other and inferior types of animal life and vegetation. How many who are advocating total fire exclusion in this region have seriously considered the consequences of disturbing this age-old adjustment?" (Tall Timbers Research Station 1961, p. 197).

The South's fire heritage has allowed it to lead the nation in promoting and practicing the art of prescribed burning. Passage of this landmark legislation is one more indication of the critical importance fire plays in southern land management. ■

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